GOVERNMENT OF
NEWFOUNDLAND
AND LABRADOR

Final Report

of

The Newfoundland and Labrador Constitution Committee

October, 1992

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INTRODUCTION

1. Membership and Mandate

The Constitutional Committee was established by the government of Newfoundland and Labrador on September 25, 1991. The Committee's membership was initially a balance of seven Members of the House of Assembly with representatives from all three political parties and seven private citizens with a variety of backgrounds and expertise. The subsequent resignation of the Chairman and the re-entry into politics of one of the private members changed the composition of the Committee to eight legislative members and six private citizens.

The Committee was formed in response to the federal government's creation of the Special Joint Committee on a Renewed Canada, part of whose mandate was to meet with the constitutional committees in each of the provinces. In establishing the Newfoundland and Labrador Committee, the provincial government assigned the following mandate:

1) to receive any representations and presentations from individuals and groups in the Province;
2) to sit with the federal parliamentary committee when it visited the Province and to consider the federal proposals; and
3) to advise the Government on constitutional issues.

2. The Committee's Processes

From the outset, the Committee was determined to have an open public process which would involve as many people as possible in the discussion and debate about the constitution and Canada's future. In the aftermath of the Meech Lake round, there were strong concerns that public input into the province's response to the 28 federal proposals was essential. An early commitment was therefore made to hold hearings in public and to ensure that all who wished to make their views known to the Committee were given the opportunity to do so. With the exception of a meeting with our Ontario counterparts, which was held privately at their request, the commitment to an open and accessible process was met.

Following public presentations by the Premier, the Leader of the Official Opposition, and the Leader of the New Democratic Party, the Committee placed general advertisements in newspapers throughout the province advising citizens of the Committee's existence, summarizing the main issues, offering to send information, requesting verbal or written submissions and announcing a tentative schedule for public hearings. A special toll-free telephone line was established for people to request information or provide their views. Prior to conducting the public hearings, ads were placed in the local media advising the time and place of the hearing and inviting citizens to make a presentation or just to come and watch.

Eleven public hearings were held around the province in the fall of 1991. The Committee was divided into two sub-groups in order to better permit the Committee to visit more places within the time available. In Labrador, hearings were held in Nain, Goose Bay and Wabush. On the Island, hearings were held in Clarenville, Grand Falls, Plum Point, Stephenville and Marystown. In addition, the full Committee held hearings in Corner Brook and St. John's.

Approximately 230 people attended the hearings and 61 presentations were received during this first phase. A complete list of communities in which hearing were held and the names of individual and group presenters is contained in Appendix A. Community halls, schools, hotels and public buildings were used for the hearings, ensuring wherever possible that the buildings were wheelchair accessible. The Committee also provided translation services for speakers of Inuktitut in Nain and simultaneous translation services in French and English for the hearings in St. John's.

In preparation for its January 14, 1992 meeting with the federal Special Joint Committee on a Renewed Canada (the Beaudoin-Dobbie Committee), the Committee prepared an Interim Report which addressed each of the 28 proposals contained in the federal document Shaping Canada's Future Together. A summary of these proposals is contained in Appendix B.

Following the release of the Beaudoin-Dobbie Committee Report, A Renewed Canada, the Committee began preparation of its Final Report. During this process the Committee considered those presentations which had been received subsequent to the Interim Report and met with the leaders of the two aboriginal groups, the Federation of Newfoundland Indians and the Conne River Micmac Band, which responded to the Committee's invitation. The Committee was not able to conduct a second phase of hearings as had been planned, and expresses regret that some residents of the province were therefore precluded from meeting with the Committee. Several written presentations, however, were received by the Committee subsequent to the public hearings. As with other oral and written presentations, these were taken into consideration by the Committee in its deliberations.

The Committee's Final Report deals with all the issues which were considered in the Interim Report and can, in many ways, be considered an extension of that first report. In some cases, the Committee confirmed the recommendations contained in the Interim Report; in other cases, based on new information, changed circumstances, or further deliberation, the Committee has revised or amplified the Interim recommendations.

It should be noted that although the Committee, in preparing its Final Report, considered the Report of the Special Joint Committee on a Renewed Canada and the June 11, 1992 "Rolling Draft"

Status Report of the Multilateral Meetings on the Constitution, it was decided to shape our Report around the original 28 proposals contained in Shaping Canada's Future Together. Elements of the two federal documents, however, were certainly considered in the Committee's deliberations and some sections of this Report reflect developments in the constitutional process beyond the initial 28 proposals.

In this regard, the Committee recognizes that by the time this report is published and released, a constitutional agreement may already have been worked out between the federal and provincial governments. In these circumstances, some may consider the Committee's Final Report to be superfluous and redundant. The Committee, however, felt that not only should the views of those it heard be brought to public attention, but that a formal record of its conclusions should be available. Further, in the event that additional constitutional negotiations are required, the Committee hopes that the Government of Newfoundland and Labrador will take our views and those of the presenters into consideration.

The Committee thanks all those who took the time to prepare briefs and to participate in the public hearings. The Committee was impressed by the high quality of most of the briefs and oral presentations, and found the public hearings thought-provoking and valuable. This Report reflects many of the views which were

expressed by the people of the province during the public hearing process.

In addition, the Committee expresses its deep appreciation to its Secretary, Wayne Green, for the heavy load he undertook in addition to his regular duties as an Assistant Secretary to the Cabinet. His organizing and arranging abilities, careful recording of decisions, and quiet competence throughout was an invaluable asset to the Committee. Our recommendation at the end of this Report that any future such committee should have a full-time secretariat stems from our appreciation of the tremendous load which was placed on Wayne's shoulders during the Committee's existence. We also thank the other members of the Executive Council staff and those elsewhere in the civil service who assisted the Committee during its existence.

3. Dissenting Opinions

Although most of our recommendations are unanimous, it was not possible to obtain unanimity on all matters. In some cases, where individual members of the Committee felt strongly enough about an issue to want their views recorded, the majority opinion is expressed in the Report along with any dissenting opinions. Where no dissenting opinion is provided, the recommendation, unless identified as being supported by a majority of the Committee, can

be assumed to be unanimous. A summary of the recommendations is contained in Appendix C.

4. General Observations

Prior to making recommendations on the specific proposals contained in Shaping Canada's Future Together, the Committee would like to offer some general observations.

1) Newfoundlanders and Labradorians want the country to remain together. This was said to the Committee, not as a platitude, but with desire. It was said with feeling and, in many cases, with strong emotion. In our hearings, the great majority of Newfoundlanders and Labradorians displayed a spirit of compromise, accommodation, and flexibility in the greater interest of the country. There was a strong sympathy for the concerns of the Francophones in Quebec and elsewhere, including our own French-speaking community.

2) In coming to grips with the complex issue of aboriginal self-government, the majority of presenters agreed that aboriginal people in this country have been done an injustice. In the difficult negotiations on this issue which lie ahead, the Committee believes that Canadians should not lose sight of this historic injustice in

determining the rightful place of aboriginal people in the federation.

3) The primary focus of the majority of presenters was on those proposals dealing with Quebec's distinctiveness, reform of the Senate, and aboriginal issues. Many presenters also prefaced their comments with a concern about economic issues, reflecting the view that while failure to solve the constitutional problems can exacerbate future economic problems, the day to day reality of earning a living is the primary concern of people in this province.

4) Several presenters expressed concerns about the constitutional process. Both the federal process and the Committee's own procedures came in for criticism. Members of the Committee share many of these concerns and a section dealing with these matters has been included toward the end of the Report.

The Federal Proposals and Our Recommendations

Proposal 1 Reaffirming the Rights and Freedoms of Citizens

The proposal to include property rights in the Canadian Charter of Rights and Freedoms received attention from a minority of presenters to the Committee. There was a sense that this was not an important issue to most people and some questioned the source of the initiative for this proposal. Others expressed concern that the full implications of inclusion of property rights were unknown. The Labrador Inuit Association (LIA) opposed entrenchment of property rights on the grounds that it would hamper settlement and implementation of land claims agreements. The Ad Hoc Committee on Women and the Constitution opposed the proposal out of concern for potential consequences including potential challenges to employment equity, affirmative action, minimum wage laws, rent controls and anti-discrimination laws by landlords and property owners. Concerns about aboriginal land claims and environmental protection laws and the potential impact on matrimonial property regimes were addressed as well as a particular concern about the potential impact of a property right in the Charter in the context of new reproductive and genetic technologies.

The Government of Canada further proposed that the votes necessary for Parliament or a provincial legislature to invoke the

override (Section 33) be changed from a simple majority to 60 percent of the members of Parliament or the provincial legislature.

Recommendation #1:

While some Committee members were philosophically inclined to support a Charter right to property, they felt the proposal lacked clarity. The majority, however, felt strongly that it is unnecessary and unwise to include property rights in the Charter. The lack of demand from Canadians for this protection and the possible consequences for collective rights and government action, together with the enormous potential for extensive litigation regardless of how narrowly the right may be defined, led the Committee to recommend that the proposal be rejected.

Recommendation #2:

With respect to the override provision of section 33, although this matter received very little public attention, a majority of the Committee felt the section should be eliminated entirely. All Canadians, regardless of province of residence, should be

guaranteed the same protection of their individual rights and freedoms. Further, the fact that Canada's "first-past-the-post" electoral system frequently results in federal and provincial governments being formed with the support of less than one-half of the voters, combined with the current realities of party discipline, makes it imperative that a legislative majority possibly formed from an electoral minority not be able to restrict the rights of citizens, even for five years.

On the other hand, some members are of the opinion that the notwithstanding clause is an expression of the supremacy of parliament and that parliament is a more appropriate forum for the development of social policy than the courts.

Proposal 2 Recognition of Quebec's distinctiveness and Canada's linguistic duality

Many presenters addressed this topic. The majority of those who made presentations to the Committee were of the view that, in terms of culture and language, Quebec's distinctiveness is an historical fact and this must be acknowledged. While many presenters had an opinion on the distinct society issue, few stated a position on whether collective rights, to preserve and protect Quebec's distinctiveness, should supersede individual rights as contained in the Charter. There were concerns that the Charter of Rights and Freedoms could, under this proposal, be applied differently in Quebec than in the rest of the country.

In its Interim Report the Committee agreed with the recognition of Quebec as a distinct society. While supporting the recognition of Quebec's distinctiveness as it relates to its French speaking majority, unique culture, and civil law tradition, concern was expressed by some as to whether the word "includes" in Section 25.1(2) is too open-ended. A second concern of some members centred around the issue of collective rights versus individual rights as it relates to "the preservation and promotion of Quebec as a distinct society". The Committee indicated that it wanted to consider other texts and proposals before making a final recommendation with respect to this proposal.

In preparing our Final Report, there was considerable discussion on this issue as well as considerable division among Committee members. The concerns were similar to those expressed in the Interim Report and revolved around the issues of collective versus individual rights, uniform application of the Charter of Rights and Freedoms across the country, the possible application of section 25.1(a) to the laws of legislatures other than that of Quebec, and the unconstricted nature of the term "includes" in section 25.1(2) as originally proposed.

Recommendation #3:

a) The Committee recommends that Quebec's distinct society be constitutionally recognized.

b) A majority agrees that such recognition be entrenched by an addition to the Charter of Rights and Freedoms but recommends modification to the proposed federal text for a new section 25.1

c) The Committee recommends that the proposed new paragraph 25.1(1)(b) of the Charter of Rights and Freedoms be changed to read as follows:

(b) "the vitality and development of the language and culture of French-speaking and English speaking minority communities throughout Canada"

d) The Committee recommends by a narrow majority that the words "in its application to the laws of Quebec" be inserted at the beginning of the proposed paragraph 25.1(1)(a) and the word "includes" in proposed clause 25.1(2) be changed to "means".

Dissent:

One member did not agree with this proposal, but felt that the recognition of Quebec's distinct society in language, culture and civil law be contained in a preamble to the Constitution.

Proposals 3,4,and 5 **Aboriginal participation in current constitutional deliberations; Aboriginal self government; and Aboriginal constitutional process.**

From the comments made on this issue by many presenters, it was evident that a general consensus exists that aboriginal people in this country have not been treated fairly. Some presenters dealt with aboriginal issues in great detail. For example, the Labrador Inuit Association maintained that they have an inherent right to self-government; that they were self-governing before the arrival of the Europeans; that they have never surrendered their right to self-government; and that it has never been extinguished. They felt that their right to govern themselves is not dependent upon recognition by the Crown or by a grant of government powers by

any Canadian authority or Government. Further, the Labrador Inuit Association contended that if the Charter is to be applied to the aboriginal right of self-government, its application should be a subject for negotiation.

Other presenters, however, emphasized that while the aboriginal peoples are the founding nations of Canada and have been done an injustice, Canada could not go back and correct the injustices of the past. They felt the ongoing injustices should be targeted by identifying them and ways should be proposed to correct them. Some expressed a need for a clearer definition of the meaning of self-government and suggested that the definition has to come from the aboriginal peoples themselves. One presenter felt the definition or description of self-government should form part of the clause. Concern was also expressed about uncertainties implicit in the proposed 10 year time limit.

While the Committee had received an extensive brief from the Labrador Inuit Association it was stated in the Interim Report that we also wished to hear from representatives of other aboriginal peoples in the province and from the Assembly of First Nations with respect to their elaborations on the inherent right to self-government.

We appreciated the opportunity to meet with the Chief of the Federation of Newfoundland Indians and also with the Chief of the Conne River Micmac Band to hear their arguments in support of self-government. Unfortunately the Committee was unable to meet with representatives of other aboriginal groups.

Recommendation #4:

> The majority of the Committee recommends that the Constitution should be amended to recognize that the aboriginal peoples of Canada have the inherent right of self-government within Canada. The inherent right of self-government should be entrenched in the Constitution. However, its justiciability should be delayed for a three year period through constitutional language and a political accord. Delaying the justiciability of the right will not make the right contingent and will not affect existing treaties.

Recommendation #5:

> Because of concerns among the public, and indeed among the Committee members themselves, as to just what an inherent right to self government means, the Committee recommends that the government undertake, in co-operation

and consultation with the aboriginal peoples of the province, a process designed to increase public awareness of the issues involved in the development of self-government for aboriginal people and how these issues might be addressed.

Dissent:

Some members of the Committee, while supporting the right of the aboriginal people to a measure of self-government within their lands and territories, believe that such right should not be granted without limitation nor without the prior negotiation and agreement of the details. If the aboriginal people are to be recognized as a "third order of government," these members believe that it is essential that the powers and limitations of this level of government be clearly spelled out. Ideally, this should be done in a subsection of sections 91 or 92 of the Canada Act, 1867. These members are therefore unable to support the above recommendation and urge that an aboriginal right of self-government not be proceeded with until the powers and limitations have been agreed to.

Recommendation #6:

With regard to federal proposals 3 and 5 concerning aboriginal participation in the constitutional process, the Committee recommends the following:

1) in order to protect the aboriginal and treaty rights which the Constitution guarantees to the aboriginal peoples of Canada, any amendment to the Constitution of Canada directly affecting the aboriginal peoples requires the consent of the aboriginal peoples of Canada prior to its implementation;

2) representatives of the aboriginal peoples of Canada be invited to all future constitutional conferences relating to the matters referred to in paragraph (1); and

3) a constitutional conference be convened within two years after the amendment on the inherent right of self-government of the aboriginal people comes into force.

Dissent:

Those members of the Committee who do not support the constitutional entrenchment of an aboriginal inherent right to self-government are also unable to support Recommendation 6 (3) above.

Recommendation #7:

(a) The Committee further recommends that there be a constitutional commitment by the Federal and Provincial governments and the aboriginal peoples in the various regions and communities of Canada to negotiate in good faith with the objective of concluding agreements establishing the relationship between aboriginal governments and the other orders of government. The negotiations would focus on the scope of the right of self-government including issues of jurisdiction, lands and resources, economic and fiscal arrangements.

(b) The Committee recommends that the Federal and Provincial governments, in negotiating the issues surrounding self-government ensure that the equality rights of aboriginal women are protected.

Proposal 6 Representation of aboriginal peoples in the Senate

The Committee's recommendation on proposal 6, concerning representation of aboriginal peoples in the Senate, is covered under the Committee's recommendations for proposal 9.

Proposal 7 A Canada clause in the Constitution

During its public hearings, the Committee found that few presenters addressed this proposal. Most of those who did, felt its inclusion would add nothing of substance. In its Interim Report the Committee agreed and stated that the inclusion of a Canada clause was unnecessary and would serve no purpose. Upon further deliberation, however, the Committee is persuaded that the inclusion of a Canada Clause in the Constitution expressing fundamental Canadian values would have merit. The Committee further believes that such a clause would guide the courts in their future interpretation of the Constitution.

Recommendation #8:

The Committee recommends that a Canada clause be entrenched in section 2 of the Constitution Act, 1867, and that the following characteristics be specifically included:

1) parliamentary democracy and Canadian federalism;

2) the aboriginal peoples of Canada and related rights and responsibilities;
3) recognition of Quebec as a distinct society;
4) linguistic duality;
5) racial and ethnic equality;
6) equality of women and men; and
7) the equality of the provinces.

Proposal 8 House of Commons

In presentations by the public there was general support for the concept of free votes in the House of Commons. As well, some presenters contended that politicians do not listen to the public once they are elected. It may be that the two ideas are joined, since elected politicians generally have to follow party lines and this may be perceived by some people as not listening to their constituents.

Recommendation #9:

While the Committee endorses the view that an increase in free votes and a corresponding decrease in votes of confidence would be a positive development in the House of Commons, we are of the view that this proposal is not essential to the current constitutional debate since a constitutional amendment is not

required to put it into effect. The proposal should, therefore, be rejected.

Proposals 9, 10, and 11 Senate Reform

Many presenters offered comments on the Senate. If there was one single message on this topic, it was that the Senate should not continue to exist in its present form. Beyond this, opinions varied all the way from abolition to major reform. There were suggestions that the Senate should be equal and elected, but that its powers should not go so far as allowing it to cause a defeat of the Government or to obstruct the work of the House of Commons.

While a number of Committee members wished outright abolition of the Senate, support could be found for a suitably reformed Senate. Committee members spent much time discussing this issue and a majority eventually agreed that the existing Senate should be appropriately reformed and that it should retain its existing powers. The Committee also agreed that an additional responsibility of the Senate should be the ratification of Federal Government appointments. With respect to the distribution of Senators, the Committee's first preference was for a Senate that is equal. While a small majority were prepared to be flexible on this point, some felt that this change is fundamental to a reformed Senate.

Recommendation #10:

A majority of the Committee recommends that the Senate be reformed as follows:

1) The Constitution should be amended to provide that Senators are directly elected by the people of Canada;

2) an equal number of Senators should be elected from each province;

3) Federal legislation should govern Senate elections, subject to constitutional provisions respecting the timing of elections, the term of office of Senators and the qualification of Senators;

4) this legislation should ensure that Senators will be elected by proportional representation instead of by the "first-past-the-post" system currently used in elections. The specific system should be set out in the federal legislation and should be chosen to reflect the diversity of Canada's population, notably taking account of gender equality;

5) all Senators should be elected at the same time;

6) Senators should be elected for terms of fixed duration, on an electoral cycle that is independent of elections to the House of Commons or to provincial legislatures and territorial assemblies. The length of the term should be five years;

7) aboriginals should be guaranteed representation in the Senate; and

8) the reformed Senate should retain all the powers of the existing Senate and, in addition, should have the power to ratify federal appointments to regulatory boards and agencies as set out in proposal 11 of Shaping Canada's Future Together.

Dissent

Some members of the Committee felt they could support a continuation of the Senate only if it were radically reformed and incorporated a guarantee of equal representation of women.

This proposal was defeated by a narrow margin. Consequently, a significant number of members reject the committee's recommendations and instead recommend that the institution of the Senate be abolished. Concerns of provincial and regional representations can be addressed through reform of the House of Commons.

Proposal 12 Appointments to the Supreme Court of Canada

Only a few presenters offered comments on this proposal. There did not appear to be major concern over the present arrangements.

Recommendation #11:

> The Committee recommends that the present system be maintained because it appears to be operating well. The Committee also supports a constitutional provision guaranteeing that three of the judges on the Supreme Court of Canada must have been admitted to the civil law bar of Quebec.

Proposal 13 The Constitutional Amending Formula

There were a number of presenters who addressed this issue. The Labrador Inuit Association asked that Constitutional amendments related to provisions concerning the aboriginal peoples and their status and rights and amendments substantially affecting aboriginal

peoples be enacted only with the consent of the aboriginal peoples. One individual suggested that Constitutional change should be made only by referendum and regional approval, with the referendum to be developed by Parliament and seven provinces. The Labrador West Chamber of Commerce supported an amending formula with no province having a veto over Constitutional matters and with all proposals being enacted with the support of the seven provinces representing 50% of the population.

In its Interim Report, the Committee stated that since the Federal proposals on this matter were not specific and since the Committee believed the existing procedures were adequate, the amending formulae should be left unchanged. After further deliberation, however, the Committee decided that unanimity is an unrealistic and excessively cautious mechanism for constitutional change and one which gives a single province the power to thwart the will of the majority of Canadians.

Recommendation #12:

> The Committee recommends that section 41 of the Constitution Act, 1982 be deleted and that the necessary consequential amendments be made so that all amendments to the Constitution, except those falling under section 43, require the approval of at least two-thirds of the

provinces having at least 50% of the population of all the provinces.

Although the Committee rejects the notion that any province, including Quebec, should have a general veto over constitutional change, we are sensitive to the concerns of French-speaking Quebec residents who wish to ensure that their language and culture are constitutionally protected. We feel that the best way of ensuring this is to provide for a double majority system of voting in a reformed Senate whereby a majority of French-speaking Senators as well as a majority of English-speaking Senators would have to vote in favour of passing any federal bill which affects the French language and culture.

Recommendation #13:

The Committee recommends that any Federal bill which affects the French language or culture must receive a majority vote in the reformed Senate of French-speaking Senators as well as a majority vote of the Senate as a whole.

A majority of Committee members agreed that it would be useful to retain the flexibility of section 43 of the Constitution Act, 1982 in order to continue the provision for constitutional amendments relating to some but not all provinces to be made without invoking the general amending procedure of section 38.

Recommendation #14:

The Committee endorses section 43 of the Constitution Act, 1982.

Dissent:

While recognizing the flexibility which section 43 of the Constitution Act, 1982 provides for constitutional changes affecting only one or two provinces to be accomplished more easily than under the general amending formula, some members of the Committee are concerned that this section could be used by the Federal Government to provide individual provinces with additional powers. In addition, it is the view of these members that any constitutional amendment which cannot obtain the support of seven provinces having at least 50 percent of the Canadian population should not be proceeded with. These members therefore recommend that section 43 should be repealed.

Proposals 14,15,and 16 **Broadening s. 121, the common market clause; Power to Manage the Economic Union; and Harmonization of economic policies.**

Several presenters supported, at least in principle, removing trade barriers between provinces. Some expressed serious concerns about how barriers would be removed because of the risk to the province's already fragile economy. One presenter pointed to the competitive disadvantage of Western Newfoundland with the absence of air freight capacity, a loss that has happened since the implementation of the Federal Government's air transport deregulation policy. The Federation of Labour expressed the view that Newfoundland and Labrador would be the loser if these proposals were adopted.

The Labrador West Chamber of Commerce commented that should the Federal Government be granted power to make laws governing the economic union, then a provincial legislature should have the ability to invoke the "Notwithstanding Clause," without the three year lapse as suggested by the proposal. Other presenters believed that the creation of a stronger Canadian economic union is important and that it will be even more vital if there is significant decentralization of Federal power and authority over other subject matters. Some presenters felt the Federal Government should have broad powers to promote equal opportunities for the well-being of Canadians and specifically to eliminate disparities.

A number of Committee members believe that the existing section 121 of the Constitution Act, 1867 is sufficient to ensure the principle of the free trade within Canada, that additional power should not be given to the Federal Government to manage the economic union, and that harmonization of economic policies should not be constitutionalized since economic policies often change with administrations.

Recommendation #15:

> The Committee recommends that proposals 14, 15, and 16 not be incorporated into the constitution.

Proposal 17 Reforms to the Bank of Canada

Very few of those who made presentations to the Committee referred to this proposal. The majority of those who did opposed its inclusion in the Constitution. Some presenters felt that the Federal Government was attempting to entrench an ideological agenda in the Constitution. Some members of the Committee opposed the Federal suggestion that the Bank of Canada Act be amended so that the sole mandate of the Bank would be to control inflation since this would possibly lead to the abandonment of its present mandate with respect to employment and growth stability.

Recommendation #16:

> The Committee is of the opinion that the Bank of Canada proposal should not be dealt with in this round of discussions on the Constitution. This is one of the proposals which unnecessarily complicates the overall Constitutional package and it is not necessary to include it in the Constitution.

Proposal 18 Training

Those presenters who addressed this issue expressed concerns about its adoption. For example, one presenter felt that the inclusion of the labour training provision conflicted with the labour market mobility rights in the Charter. The Ad Hoc Committee on Women and the Constitution expressed concern with the transfer of responsibility for certain areas to the provinces. They were opposed to the training provision being included in the constitution.

Recommendation #17:

> The Committee feels that, while there may be problems with the present system, transferring responsibility under the Constitution to the provinces is not in this province's best interest nor is it in the best interest of the

country as a whole. Proposal 18 should therefore be rejected.

Proposals 19 and 20 Immigration and Culture

Very few presenters focused on these proposals, although a few expressed some concern over the preservation of aboriginal culture should the Federal proposals be adopted.

Recommendation #18:

The Committee is of the opinion that the current system for entering into agreements concerning immigration and culture is satisfactory. Incorporating these agreements into the Constitution is inappropriate and unnecessary.

Proposal 21 Broadcasting

Very few presenters addressed this topic. Some of those who referred to the preservation of aboriginal culture under the proposal on culture, also made reference to the importance of native broadcasting to the preservation of native language and culture.

Recommendation #19:

> The Committee is of the opinion that the objectives sought through this proposal can be met in ways other than through the Constitution and therefore recommends that proposal 21 not be proceeded with.

Proposals 22 and 23 The Residual Power and the Federal Declaratory Power

Very few presenters addressed either of these proposals. The Committee feels that the proposals are not only unnecessary but could weaken the Federal Government. The Committee believes that the Federal Government should retain the existing declaratory power set out in section 92(10)(c).

Recommendation #20:

> The Committee recommends that proposals 22 and 23 be rejected.

Proposal 24 Recognizing Areas of Provincial Jurisdiction

The six areas listed are already within provincial jurisdiction, although in recent years the Federal Government has used its spending power to provide a substantial amount of funding for provincial activities in these areas and has carried out a significant amount of research and development. The Committee believes that these activities have generally been positive for the

provinces and should not be constitutionally constrained. Further, since provincial powers in these areas are already evident; they do not need to be "recognized" or confirmed.

The Committee is concerned that the proposed amendment might be used by the Federal Government to justify cutting funding which the provinces need to carry out their responsibilities and to justify withdrawing from research and development activities. Administrative arrangements can always be adopted to avoid overlaps and duplication in delivering programs.

Recommendation #21:

The Committee recommends that proposal 24 be rejected.

Proposal 25 Legislative Delegation

Few presenters addressed this proposal. One presenter was of the view that if the delegation of powers proposal is intended to give extra powers to Quebec, then the Federal Government must have the political courage to state so clearly. Another presenter, while having concerns, supported the proposal because that person felt it to be in the best interest of smaller provinces.

Recommendation #22:

> The Committee believes that the adoption of proposal 25 would lead to patchwork federalism with provinces having different legislative powers. The Committee recommends that the proposal be rejected.

Proposal 26 Candidates for Streamlining

A number of the presenters in Labrador raised concerns over the province having to assume responsibility for wildlife conservation and promotion, ferry services, and small craft harbours. It was felt that the Province could not afford it. The public opposed the apparent "downloading" of programs, services and financial responsibilities to the provinces.

Recommendation #23:

> The Committee believes that proposal 26 could have a detrimental effect on this Province and that it should not be included in the Constitution.

Proposal 27 The Exercise of the Federal Spending Power in Areas of Exclusive Provincial Jurisdiction

Most presenters seemed opposed to this proposal; others did not take a position. Few, if any, endorsed it. The Labrador Inuit Association stated that if a province opts out of a national

program, the opting out should not apply to aboriginal people resident in the province unless they have so consented.

Recommendation #24:

> The Committee recommends that this proposal not be included in the Constitution because we believe that the requirement of having the approval of seven provinces representing 50% of population could prevent the adoption of new national cost shared programs. The Committee believes that the social programs previously initiated by the federal government are an essential part of the national fabric.

Proposal 28 Working Together: A Council of the Federation

Some presenters addressed this proposal with the majority expressing the view that such a Council would create another level of Government with resulting duplication and expense.

Recommendation #25:

> The Committee is of the view that this concept would be worth pursuing only if the Senate is not structured and operating along the lines referred to in our recommendation on Proposal 9. Otherwise, the Committee feels the establishment of such a Council would mean

that governments would be abdicating their responsibility to a group that is unelected as a body and therefore unaccountable. In principle therefore, the Committee cannot endorse the concept.

Other Issues

During the hearing process there were other issues which, although not directly related to any specific proposal, the Committee feels obligated to bring to government's attention.

1. Social Charter/Social Contract

In its Interim Report, the Committee noted that there were no proposals contained in the Federal package that addressed the notion of protection for social and economic rights in the constitution. Most presenters concentrated on the 28 proposals, although a number expressed views on the inclusion of a social charter in the constitution. Some expressed doubts about the ability to provide constitutional protection for social and economic matters such as the right to food, shelter, housing, health and education. The Committee noted the promotion of the social charter by the government of Ontario and others, but also recognized concerns about the ability of the province to deliver health, education and welfare programs to national standards.

The Committee further noted that it was prepared to consider concrete proposals which may be forthcoming and to further study the possible need or form that such protections might take. We also wished to consider the matter further in light of the existing section 36 and possible changes to it and the Committee's interest in considering the role that a reconstituted Senate might play.

In its second phase deliberations, the Committee devoted considerable time to the question of a Social Charter. It was agreed that given the existence of economic disparities within our country, the greatest hope for removing these disparities rests in the attainment of the goals outlined in an amended section 36 of the Constitution Act. It is only by seeking to promote policies which remove the disparities at the individual level and by creating a socio-economic environment which maximizes the opportunity for the individual, that regional disparities may be overcome.

Section 36(1) is unique in that the Federal and Provincial Governments jointly make commitments to all residents of Canada concerning essential public services delivered to individuals. Our Committee believes that an amended section 36(2) should make it possible for provincial governments to deliver these essential services at agreed upon standards. The Committee's proposed section 36(3) supports the entrenchment of government commitments aimed at reducing economic disparities. Such commitment will call for co-operation among all levels of government.

The Committee therefore makes the following recommendations with respect to section 36 of the Constitution Act, 1982 which deals with equalization and regional disparities.

Recommendation #26:

The Committee recommends that a new section 36(1)(d) add a commitment to ensure the provision of reasonably comparable economic infrastructure of a national nature in each province and territory.

Recommendation #27:

The Committee recommends that section 36 (2) be amended as follows:

"Parliament and the Government of Canada are committed to making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation."

Recommendation #28:

The Committee recommends that a new section 36 (3) should be added to entrench the commitment of governments to the promotion of regional economic development to reduce economic disparities.

Recommendation #29:

The Committee recommends that the following principles be added as section 36.1:

1) Providing throughout Canada a health care program that is comprehensive, universal, portable, publicly administered and accessible.

2) Providing social services and welfare based on need, so as to ensure that persons resident in Canada have access to a minimum level of housing, food and other basic necessities.

3) Providing high quality public primary and secondary education to all persons resident in Canada and ensuring reasonable access to post secondary education.

4) Protecting, preserving, and sustaining the integrity of the environment for present and future generations.

5) Protecting the opportunities of workers to organize and bargain collectively.

Recommendation #30:

> The Committee recommends that the rights under section 36 and 36.1 not be justiciable.

The likelihood that these social objectives will be achieved as a result of the associated joint commitments by governments to Canadians would be enhanced if an intergovernmental agency were established to review, assess and report on the performance of the federal, provincial and territorial governments in meeting the joint commitments and objectives stated in section 36(1).

Therefore, in concurrence with a recommendation which the Special Joint Committee of the Senate and the House of Commons made with respect to section 36 and 36.1 of the Constitution:

Recommendation #31:

> The majority of our Committee recommends that an independent, intergovernmental agency be established to review, assess, and report on the performance of the federal, provincial and territorial governments in meeting their joint commitments and objectives as stated in section 36 and 36.1 of the Constitution Act, 1982.

While the details of such an agency are best left to a political accord, the Committee feels that the following principles should be considered in its composition: members should be chosen for their competence; there should be equal representation from each province; the number of representatives should be moderate (around 20); the members would be selected by the Senate from a list of names provided by the provinces; and the agency board would report to the Speaker of the Senate.

2. The Constitutional Process

As noted in the introduction, the Committee concurs in many of the views which were expressed during our hearings concerning the constitutional process. The Committee deplores the atmosphere of artificial deadlines and rhetorical threats which have surrounded the recent constitutional discussions. We recognize that while some steps were taken to allow public input, neither the Spicer Commission nor the Unity Conferences provided the context for sustained and concentrated public debate of the issues. Nor have either of these mechanisms apparently had much effect on the process which, once again, has ended with marathon bargaining sessions between first ministers. We believe that the country deserves a better method of discussing constitutional matters.

Along with some presenters, the majority of the Committee members believe that a representative Constituent Assembly of private citizens would have been a preferable means of exploring constitutional alternatives to satisfy all Canadians.

Recommendation #32:

> Consequently, the majority of the Committee recommends that if the current round of constitutional talks should fail, or if major constitutional adjustments are required in the future, that a representative Constituent Assembly be created. The Constituent Assembly should have an equitable number of citizens elected from each province, and should be given the widest possible mandate with no time limits.

With regard to the Provincial process, the Committee also has concerns. The Committee believes that it could have been a greater positive force had it been created sooner. The late creation of the Committee and the impractical (and eventually postponed) deadline imposed by the federal Special Joint Committee resulted in the first round of public hearings being rushed and held with inadequate notice. Due to organizational difficulties, the Committee's promised second round of public hearings never took place. This not only deprived the Committee of the views of those

who may have attended the hearings or made presentations, but hampered the Committee from receiving input from some areas of the province. While the Committee found that the mixture of politicians and private citizens was extremely useful in providing greater understanding of issues and quality of deliberation, certain difficulties arose with administrative matters.

Recommendation #33:

> The Committee recommends that any such future committee have an independent chairperson who is not an MHA or a member of Cabinet, an approved budget, and full-time secretarial assistance.

3. **Resources**

The Committee agrees that Newfoundland and Labrador needs greater power than is conferred by the present constitution to plan and manage the fishery and other offshore resources. Considering the fact that the fishery has been the province's most important industry, and that offshore mineral development promises to be important in the future, the Committee beleives that the provincial government must have significant influence over these sectors in order to achieve the province's social and economic goals.

Recommendation #34:

The Committee recommends that a federal-provincial fisheries joint management agreement be negotiated and entrenched in the constitution.

Conclusion

This Final Report represents the considered views of the members of the Newfoundland and Labrador Constitution Committee. Each member of the Committee brought to it his or her own philosophical and political viewpoints. All members have had their views challenged, not only during discussions with other members of the Committee, but during the public hearing process.

This Report represents the outcome of many days of discussion and compromise. In the end, some members felt that they could not compromise their principles on certain issues to accept a majority position; in such cases a minority dissent has been included, not only to assuage the feelings of the minority dissenters, but also to provide government with alternative views. In general, however, the vast majority of recommendations represent a consensus that was at times difficult to negotiate, but worthwhile to achieve.

The spirit of compromise and flexibility shown by all members of the Committee revealed itself in sometimes unusual circumstances. For example, in the midst of an involved discussion of the Senate, a majority of the Committee resolved to recommend that the Government of Newfoundland and Labrador be flexible in its approach to constitutional reform. In other words, the Committee opposes stubborn insistence on precise models or texts, fearing that a rigid approach may jeopardize national reconciliation. In keeping with its own approach, the Committee advocates reasonable compromise for the sake of Canadian unity.

The citizens who spoke to and made written presentations to the committee repeatedly stressed the need to bear in mind the fundamental objective of keeping Canada united and strong. All members of the Committee strongly endorse this view.

MINORITY DISSENT - LYNN VERGE, MHA HUMBER EAST

There are two issues - one vitally important to Newfoundland and Labrador, the other fundamentally significant to the whole country - I wish had been more prominent in the constitutional discussions of the past three years. The issues I am referring to are:

- the division of powers over the fishery and offshore mineral resources; and
- balanced representation of women and men in our political institutions.

The 1987 Meech Lake Accord provided for roles and responsibilities in the fishery as well as Senate reform to top the agenda of future annual first ministers' annual conferences on the constitution. When the provincial government changed in the spring of 1989, however, the Wells Administration dropped the issue. This is extremely regrettable since, following the failure of the Meech Lake Accord, the constitutional agenda lengthened to include the division of powers on several matters and there was a real opportunity - the only real opportunity since the Terms of Union were negotiated - to assign to the Government of Newfoundland and Labrador a proper amount of influence over the fishery and offshore minerals.

The Committee's report, near the end, does state the unanimous view of members that the province "needs greater power than is conferred by the present constitution to plan and manage the fishery and other offshore resources". There is a

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recommendation "that a federal-provincial fisheries joint management agreement be negotiated and entrenched in the constitution".

I believe this part of the Committee's report should be highlighted and emphasized.

On the question of women's representation, the constitutional debate of the past few years never really got beyond the Senate. Although I feel ambivalent about the Senate, I am one of the Committee members who believes that if we are to retain the Senate, there should be provision for equal representation of women.

The democratic system that we have had, that is embodied in the present constitution, is not the only form of democracy in the world. Our system was in place long before women gained the right to vote and seek election, and it has not produced anything like equitable representation of women. In Newfoundland and Labrador, we have never elected a woman to the federal parliament, and we have never had a provincial legislature with more than six per cent women. There are now only two women out of the fifty-two members of the House of Assembly. In my view, there is no escaping the conclusion that the present system has failed women and there must be reform.

If the Senate is to be reformed to reflect the equality of the provinces and to give equal voting power to the two official-languages groups on matters affecting French language and culture,

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it would be quite logical to provide for equal representation of women and men.

I am less than enthusiastic about the Senate and have real fears about the consequences for Canada as a whole if the Senate were to exercise more power. I am afraid a Senate exercising the same or similar powers to the House of Commons would complicate, delay and frustrate the federal government.

Despite the claims of the proponents of a Triple-E Senate, when the possible positive as well as negative consequences are taken into account, I cannot see how Newfoundland and Labrador would be further ahead with a reformed Senate.

My own preference would be to abolish the Senate and instead assign proportionately more seats in the House of Commons to Newfoundland and Labrador and the other less populous provinces. However, as is stated in the body of the Committee's report, compromise is essential if we are to have a national reconciliation.

Finally, I wish to make a few comments on the question of Quebec's place in Canada. Quebec, understandably, wants constitutional reform to ensure its ability to preserve and promote the language and culture of its French majority. Much of the debate of the past few years has centred around the question of whether Quebec should have different powers from other provinces: special status versus equality of the provinces. In my view, given the circumstances in which Canada was founded and considering the

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evolution of the nation, it is quite justifiable for Quebec to have somewhat different powers from other provinces. I would prefer this to the alternative of a wholesale devolution of powers to the provinces to achieve some sort of technical equality of the provinces. I very much liked the "asymetrical federalism" proposals that came out of one of the constitutional forums held in the past year.

In concluding I can't resist quoting the clever person, unknown to me, who observed that Canada is a great country in practice, it just doesn't work in theory. People in other parts of the world must shake their heads at the incessant constitutional wrangling and nit-picking of the past few years. Our laborious discussions and meetings are preferable, though, to the violent approaches taken elsewhere to resolving conflicts.

Minority Report: Doug May

Recommendation #10 of the Committee's Report calls for Senate reform. While supporting most parts of this Recommendation, I do not support subsections 2 and 8. These subsections along with subsection 1 have the effect of calling for a "Triple-E" Senate with powers equal to that of the House of Commons. Such a Senate would be unworkable and would reduce the effectiveness of the federal government.

Like many of my fellow Committee members my first preference is for the abolition of the Senate in its existing form. However, I acknowledge that there may be potential benefits to the existence of such a body. The Senate may provide a second considered opinion on matters of national importance and, as such, the Senate might aid in the prevention of rash decisions by the House of Commons. Secondly, depending on its composition, the Senate may seem to be an attractive answer to regional imbalances which the current parliamentary structure has permitted to exist; a reformed Senate could provide a forum to voice regional concerns. Locally generated suggestions, as to the appropriateness of national policies at the regional level, have often been rebuffed by Ottawa in what appears to be a patronizing attitude. This attitude seems to prevail particularly when it comes to matters such as income security reform. While such reform must adhere to nationally agreed to principles, such as those pertaining to equity, it is clear that any reform will have a differential impact on various regions of the country. No province would be more greatly affected by changes to the current UI system than Newfoundland. It is significant, however, that in the important area of Unemployment Insurance, a majority of the nine premiers who participated in the recent Multilateral Meetings on the Constitution and Ottawa

have committed themselves to improving the efficiency of the UI system even though this is, and will remain, an area of exclusive federal responsibility.

In order for any voice in the Senate to be legitimate it must be **elected**! Is it also necessary for the number of votes for each representative group to be **equal**, as is called for in subsection 2 of Recommendation # 10? I do not believe so for the following reasons.

The argument has been advanced by some, that the "equality of provinces or states" is a fundamental principle of a confederation. I accept this principle or right. However, the ultimate use of such a right to be exercised by the citizens is to opt in or out of the federation. Accepting this principle does not categorically, nor automatically, imply that all provinces must be represented equally in a Senate. If the principle were to imply this structure then the composition of the Senate has been flawed since day one, and Newfoundland should never have agreed to enter Confederation under such terms. Further, had the principle of equal Senate representation existed at the time of Confederation then the original four provinces which formed Canada might have constrained the number of new provinces to be admitted. They might also have conceived of a different division of powers between the federal and provincial levels of government. The fact is, that at the time of Confederation, all provinces, although equal, did not have an equal number of senators. In addition, the concept of equal has little to do with the effectiveness of a regional voice since, over the long run, as the number of provinces change so will the strength of a province's voice.

Minority Report: Doug May

In determining the composition of the Senate one has to decide whether or not the real issue is **influence** (a legitimate voice) or **power**(number of votes). What is called for by those who support a true Triple-E is a legitimate voice to provide a provincial perspective, but what perhaps is really sought is control. Provincial control, however, is only needed on those matters which are uniquely provincial in nature and these matters should not be dealt with at the federal level. In other words, issues that are distinctly provincial in nature should be under provincial jurisdiction, not federal. In an economic and political union provinces/states are willing to surrender certain responsibilities to a federal government. If provincial power is what really matters then do not have a federal government.

I conclude that an equal number of elected seats is not a necessary condition to having a legitimate voice in the Senate on provincial issues.

A separate important problem arises with a Senate that is equal and elected. The issue is; do provincially elected senators who are elected as a result of **proportional representation**[1] have a greater legitimacy in representing the provinces than provincial governments which are elected as a result of the first-past-the-post principle? I think the answer may be yes but the issue is debatable. In the meantime one can safely forecast debate on which group truly represents provincial

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[1] This method of election is being proposed by our Committee. In addition, this method was a recommendation coming out of the Multilateral Meetings on the Constitution. The argument being made here would still hold with respect to federal issues if senators were elected by the first-past-the-post system but one might believe proportional elections provide more representative government.

opinion when opinions differ.

Can the principle of equality be sacrificed? In terms of Senate representation it never has been equal. To move towards the concept of an equitable Senate is not a great sacrifice if senators are elected.

Up to this point in the argument it has been admitted that elected Senators would provide a legitimate voice for provincial concerns in federal matters. However, it would be wrong, as well as misleading, to assume that provincial concerns can only be heard on strictly federal issues if there is a "Triple-E" Senate or indeed any Senate. Members of the House of Commons do bring a regional/provincial perspective, as well as national one, to issues arising in the House of Commons. Indeed, influential members of government may bring a stronger regional voice in government decision-making than would be possible through any form of reformed Senate. In addition, the federal government will often formally or informally consult with provincial organizations and/or governments even when those matters are strictly federal in nature. The current co-operation in the fisheries crisis is a good example of local suggestions being heard.

The informal consultation process of the sort noted above, are being augmented by First Ministers Conferences. More importantly, there is general agreement amongst nine premiers and Ottawa arising out of the Multilateral Meetings on the Constitution(MMC) that these conferences should be entrenched in the Constitution. Earlier I raised the issue as to which group could claim to legitimately represent provincial public opinion. The recent constitutional process demonstrates that the current

politicians believe that the provincial premiers will be paramount. I believe that provincially elected senators may have more of a claim to being more representative of provincial opinion if there is proportional representation. Therefore, an elected and equal Senate may reduce the effectiveness of the voice of the Government of Newfoundland and Labrador.

There are times in which federal government departments will undertake actions which have local impacts, but which having a provincial voice in the Senate is irrelevant. Any questioning of the department would take place in the House of Commons with the minister responsible responding. The Senate would vote on legislative matters and not on the day-to-day running of government. In these matters the Senate cannot have a voice.

I therefore conclude that while a reformed Senate may provide a platform to voice Newfoundland concerns on federal matters, it is not the only one, nor, in some instances, is it the most appropriate one. Indeed, it may have no voice at all.

The third component of a "Triple-E" Senate is that it must be **effective.** The most effective version of a Senate is one in which the powers are equal to those of the House of Commons. Subsection 8 of Recommendation # 10 would give the Senate these powers and more. The Senate could propose legislation just as the House of Commons does.

Would a truly Triple-E Senate protect provincial interests? Is a Triple-E Senate a sufficient condition for the protection of provincial interests? I do not believe it is. For example, the House of Commons may propose legislation which is of benefit to

Newfoundland and Labrador but which the other provinces might block because of potential resource diversion. Or, the House of Commons and a majority of the other provinces may decide to introduce some piece of legislation which is detrimental to Newfoundland and Labrador. There is nothing Newfoundland could do in this Triple-E Senate which would guarantee its interests. A veto or a restriction on legislative jurisdictions would be needed in order to provide such a guarantee.

What would happen if the Senate were to veto the legislation of the House of Commons? The legislation would die. Further, it is possible for both bodies to have their own legislation on the same issues. Thus there is a very high probability that such blockage would occur with a resultant decrease in the effective management of the national government. One could easily imagine that it might be much more difficult to introduce new social programs as partisan politics would dominate the relationship between the House of Commons and the Senate. The American experience might be relevant in this regard. In addition, debate will occur as to which institution of Parliament should dominate on issues, which everyone agrees are federal in nature. Partisan politics, not issues, would drive the parliamentary agenda

The major difficulty with the concept of a truly Triple-E Senate is that there is no dispute resolution mechanism; there is no mechanism to break the inevitable deadlocks with the House of Commons. Parliament becomes at best less effective, and, at worst, unworkable. The nine premiers who participated in the recent Multilateral Meetings on the Constitution and Ottawa recognized the problem. They realized that there could not be a truly Triple-E Senate, that is, one which had powers equal to that of the House of Commons without some deadlock breaking

mechanism. Therefore, the current version of the Senate, which was proposed in the final agreement coming out of the MMC and which was accepted by the Government of Newfoundland and Labrador, is really a "modified Triple-E" Senate. The modification proposed is to the "effective" part of the Triple-E Senate.

In the proposals arising out of the MMC, the effectiveness of the Triple-E Senate has been reduced by having four categories of legislation. Most legislation coming before the Senate could only be vetoed if more than seventy percent of the Senate votes against its adoption. The likelihood of such an occurrence is relatively small; on most matters the will of the House of Commons will dominate since immediately below this threshold there would be a joint meeting of the Houses of Parliament. The House of Commons would dominate since it has many more members. The proposed four categories of legislation only serve to complicate matters. Still, I believe that the current MMC proposals with respect to the categories of legislation are reasonable compromises to overcome the difficulties of a truly Triple-E Senate which a small majority of our Committee recommended.

The provincial government's enthusiastic support for a Triple-E Senate has primarily rested on economic arguments. The Government believes that a truly Triple-E Senate would reduce regional disparities by permitting the introduction of regional development investment policies which would encourage business to locate in Newfoundland. Concurrently, a Triple-E Senate would prevent, or greatly reduce, the possibility of industrial

development strategies aimed at Canada's heartland from being introduced while regional development policies were in existence. One would be hard put to argue against a Triple-E Senate if such an institution would bring prosperity to Newfoundland and Labrador and reduce its dependency on Ottawa.

As noted earlier there are no guarantees that a Triple-E Senate or any Senate could get such policies passed. More to the point,however, is that the above economic argument in support of a Triple-E Senate assumes that regional development investment policies are **effective**. Will these regional development policies overcome or are a cost effective means of reducing regional disparities?

Starting in the period around the mid-1950s there were a number of federal policies which were designed to promote business and employment opportunities. These policies often included investment incentives, grants, and general reductions in business taxes. The evidence which has been collected to date unequivocally demonstrates that such policies promote inefficiency(decreases in productivity) and are very costly to the public purse. The measurable benefits are very small indeed. Regional development strategies and industrial policies have been subject to almost continuous change since the mid-1950s because the specific problem to be dealt with remains unchanged by the policy treatment. What is even more disturbing is that industrial policy treatments abandoned in the late 1970s because of their lack of success are being reintroduced in 1992.

Provincial governments will try to influence business locational decisions by similar policies. In my opinion the Government of Newfoundland and Labrador should call for a

harmonized approach since our financial resources are not such as to win any battle with other provinces. Any short term wins can be more than matched by long term losses.

The Government has also argued that the co-existence of national industrial strategy policies are detrimental to regional development. Canada is a small open economy operating in a competitive global environment. Businesses which are attracted to, or decide to stay, in Ontario and Quebec because of such policies are not likely those which would respond to regional incentives and operate in the have-not regions of the country. The alternative to Ontario is not Newfoundland, but probably Mexico, South Korea or Thailand.

The path to economic development for the have-not regions is not through policies which are dependent on the existence of a Triple-E Senate or any Senate. While there are no short-term panaceas, the most likely improvements are to be found if we commit ourselves to **basic education (invest in human capital)** so that the level at which our students can perform will meet international standards. According to recently released reports by the former Economic Council of Canada we are not meeting these standards at the present time . Furthermore, over the past few years, the situation has been deteriorating. Secondly, the province requires the proper **infrastructure** in terms of transportation and communications. Our citizens also require basic health care for all and income support for those most in need. The proposed changes to Section 36.1 (Recommendation #29) of the Constitution Act should work in this direction. Finally, the road to removing regional disparities rests with provincial governments co-operating with the federal government and with one another in order to smooth the process of adjustment caused by

technological change, resource depletion, and shifting market forces within the economy. In other words, there must be positive economic integration with a social conscience, that is, there must be some harmonization of social and economic policies. Appropriate development policies relate to the areas controlled by the Province and not by any Senate. The financial resources needed to carry out these policies would be guaranteed by the proposed changes to Section 36 of the Constitution.

The Senate, even in its current modified Triple-E version, seems to be at the centre of the constitutional debate. For the citizens of Newfoundland and Labrador this focus is, in my opinion, unfortunate. A Triple-E Senate is neither necessary nor sufficient for the protection of Newfoundland interests nor for overcoming regional disparities. It may in fact impose significant costs on Newfoundland and Labrador if it hampers effective government. Further, it may reduce the effectiveness of the voice of the Government of Newfoundland and Labrador. Believing that the Senate may protect provincial interests may lead to a false sense of security and redirect our attention from the more important issue of the division of powers. Finally, Canadians, already tired of constitutional bickering, will note that this political body is yet another source of friction. There is a high probability that this friction will continue to be an irritant in the future as the Senate remains at the centre of power struggles. Not only is the cost of abandoning the Triple-E small but the cost of getting it may be incredibly high. I cannot endorse subsections 2 and 10 of the Committee's Recommendation #10.

MINORITY REPORT OF

JACK HARRIS, N.D.P., M.H.A., ST. JOHN'S EAST

August, 1992

Although the Final Report of the Constitution Committee sets out where the report is less than unanimous and indicates the dissenting position with respect to the recommendations in question I feel compelled to provide a minority report to identify those areas where I have not supported the majority position and further to elaborate on those areas of particular concern with respect to the important issues of Senate Reform and the methods of advancing the aims of the Social Charter.

Recommendation #2: "Notwithstanding" clause contained in the Charter of Rights.

> It is my firm belief that this clause provides an appropriate balance between the individual rights of citizens as decided by judicial interpretation of the Charter of Rights and the collective rights of citizens as determined by their elected representatives in the Parliament of Canada or the legislatures of the provinces. It maintains the supremacy of parliament as the ultimate expression of the will of the people. Social policy should be determined by the legislature, not the courts. I would therefore retain the clause as contained in the current constitution.

Recommendation #3:

The constitutional recognition of Quebec as a distinct society was unanimously recommended by members of the Committee but there were differences as to the form that such recognition would take. I support Recommendations 3(a), 3(b) and 3(c) but oppose the narrow interpretation and application of the proposed distinct society clause imposed by Recommendation 3(d).

Recommendation #10: Senate Reform

While I initially supported the long held view of my own party that the abolition of the undemocratic, unelected Senate was in the best interest of Canada and Canadians, the momentum of support for a reformed Senate, particularly in Western Canada created a political situation where some form of Senate was inevitable if any resolution of constitutional differences was to take place.

I opposed the majority position favouring an equal Senate with the full powers of the existing Senate plus more and the added

> legitimacy of being elected. Indeed it was only a slim majority voting on the final draft which favoured it. To me such a Senate would be unworkable, leading to inevitable and constant deadlock,totally unbalanced and out of keeping with our parliamentary style of government. It would also be politically unacceptable, particularly to the provinces with larger populations who would inevitably compare their population to that of Prince Edward Island or Newfoundland and Labrador and question the legitimacy of equality of powers in such a scheme.

My own vision would be of a New Reformed Senate which would contain equal representation from all provinces and representatives from the territories and aboriginal peoples. It would guarantee representation from an equal number of men and women. Senators should be elected by a system of proportional representation, enabling the full range of opinion found in the electorate to receive expression through elected representation, not only the opinions of those with a plurality of support who may nonetheless represent a minority view.

A new, fully representative, gender-equal Senate with equal representation from the provinces would be given a task worthy of the idealism which its structure would imply. I would give this Senate the primary responsibility to monitor and influence the implementation of the Social Charter - those principles and ideals that are at the heart of what makes Canada itself a distinct society within the world.

I fully support the changes recommended to Sections 36 of the Constitution and the addition of Section 36.1 that are contained in Committee Recommendations #26, 27, 28, 29 and 30. However, instead of creating an agency to write reports as the Recommendation #31 would provide, I would give a New Reformed Senate, with the legitimacy which would come from being elected, the mandate to advance the goals of the Social Charter.

This Senate should have the role of initiating legislation which must come before the House of Commons and also debating and voting on legislation from the House of Commons. However, ultimate power would rest with the House of Commons. With such a Senate, elected separately from the House of Commons, a different national political consensus would develop which would affect and modify the agenda of Parliament and promote the goals of the Social Charter set out in the new Sections 36 and 36.1.

Measures which achieved the overwhelming support of the Senate could only be ignored by the government in the House of Commons at their political peril.

This New Reformed Senate would represent the equality of the provinces, the equality of men and women and promote equality across and throughout Canada of access to health care, social services, education, public services and economic opportunity.

Elements of a New Reformed Senate:

1) Equal representation from the provinces.

2) Territorial and aboriginal representation.

3) Equal representation by men and women.

4) Primary responsibility for Social Charter implementation.

5) Legislative responsibility to initiate bills which then go to the House of Commons.

6) Legislative responsibility to review and pass on or amend House of Commons bills.

7) House of Commons to have ultimate say subject to normal political control though constitutional conventions and the electoral process.

Recommendation # 27 - 31 - Social Charter

Newfoundland and Labrador, more than any other Province requires a strong and vibrant commitment throughout Canada for the goals contained in those elements of a Social Charter set forth in the proposed additions to Section 36 of the Constitution and the addition of the new section 36.1 as provided in Recommendations # 26, 27, 28, 29 & 30.

Our people need a strong national commitment to standards of health care, social services, educational and economic opportunity. And the Government of this Province must have the financial resources to ensure that the delivery of those services at the national standards rightfully demanded by our citizens does not impair its ability to operate in other areas of its constitutional responsibility.

Therefore, the adoption of a Social Charter and the securing of a prominent place for its goals to be forcefully addressed becomes a top priority for Newfoundland and Labrador. A

committee, or agency, such as proposed in Recommendation #31, is inadequate to address the high ideals and fundamental nature of the aims set forth in the Social Charter.

It is therefore recommended, as set forth in the previous section, that the primary responsibility for the implementation of the Social Charter be mandated to the New Reformed Senate.

Committee Process

While I fully endorse the usefulness of the Constitution Committee in providing a forum and opportunity for the public expression of views on these most important matters I wish also to underline my own concerns.

The late appointment of the Committee limited its effectiveness in garnering input from across the province and its potential influence on the course of events and led to a rushed interim report. A committee struck immediately following the tabling of the Federal proposals or indeed soon after the failure of the Meech Lake Accord could have better dealt with the issues involved in deriving a constitutional position based on the needs of

Newfoundlanders and Labradorians in the Canadian Confederation. In the event, the Committee could, for the most part, only react to the proposals and to the rapidly changing political events.

The Committee suffered from lack of resources. While I commend the efforts of Wayne Green of the Executive Council Cabinet Secretariat to whose other duties was added the responsibility as Secretary to the Committee, which he exercised faithfully and diligently, the Committee should have been provided with full-time staff and independent research capability to adequately explore and examine such important issues as were before it.

The Committee also was hindered by inadequate and inconsistent direction from the Government as to its activities and its mandate. Committee members were frustrated by the apparent lack of enthusiasm by the government for the continuation and completion of its work. Indeed the Committee, despite the short time span available to it, was dormant for some 8 to 10 weeks apparently awaiting further instructions from Cabinet following its interim report. This led to further delays while seeking proper directions.

Despite the above I wish to heartily endorse the approach of combining private citizens and elected Members of the House of Assembly on such a committee. The contribution of those outside

the electoral process was invaluable and much was mutually learned from the exchange of views and experiences of those involved. The added value of having a chair chosen from outside the legislature as recommended in the Committee's Final Report would also have improved the operation of the Committee, since the other political responsibilities of the successive chairs of this Committee made them unavailable more often then was compatible with the smooth running of the Committee.

Finally, I wish to thank all those who took the time to contribute their opinions and ideas to the Committee and my fellow Committee members for their often spirited and always sincere expression of their views in the best interests of the future of our province and country.

APPENDIX A

Presentations

Honourable C. Wells, MHA
Premier

Mr. L. Simms, MHA
Leader of the Opposition

Mr. C. Newhook, Leader of
the New Democratic Party

Hon. B. Peckford	Mr. J. Hackett
Mr. Russell Rogers	Dr. G. Anjilvel
Mr. John Boland	Mr. Frank Kennedy
Mr. Al Maloney	Mr. Ed Whittle
Judge Robert Fowler	Mr. Cyril Sinyard
Mr. Terry Goodyear	Mr. Dale Lambe
Mr. Art King	Ms. Seana Clowe
Mr. Gordon Ralph	Ms. Susan Shallow
Mr. Mark Anstey	Mr. Mike Piccott
Mr. Tim Hopkins	Mr. Fred Bitner
Mr. Fred Stagg	Mr. Andrew Marshall
Mr. Jay Gajjar	Mr. Norman Kipnis
Ms. Cheryl Stagg	Dr. F. Lin Jackson
Mr. Peter Fenwick	Mr. Roy Baetzel
Mr. Jerome Jesseau	Ms. Verna Hollett
Mr. John Sweetland	Dr. S. Tomblin
Mr. B. Whiffen	Mr. Doug Bath
Mr. Ron Brown	Mr. Terry Alexander
Mr. Noel Parsley	Mr. Eric Mintz
Mr. Garfield Warren, MHA	Mr. Rocky Schulstad
Mr. Roland Tucker	Mr. Peter King

Mr. John Peddle

Mr. Pierre DeGrandmont

Mr. Harold Tucker

Mr. Ern Condon

Mr. Kirk Maddox

Mr. Sean Gillam

Mr. Baron Butt

Mr. William Hughes

Mr. Henry Shouse

Ms. Shirley Squires

Mr. Geoff Stirling

Dr. B. Murphy

Mr. W.N. Strickland

Mr. C.W. Hancock

Mr. Bill Simpkins

The Ad Hoc Committee on Women and the Constitution

Coaltion for Equality of Newfoundland and Labrador

Federation of Francophone Parents of Newfoundland and Labrador

Federation des Francophones de Terre-Neuve Et du Labrador

Friends Against Drunk Drivers

Labrador West Chamber of Commerce

Newfoundland and Labrador Arts Council

Grand Falls-Windsor Chamber of Commerce

Town Council of Labrador City

Corner Brook Chamber of Commerce

Labrador Innuit Association

Combined Councils of Labrador

O'Kalakatigat Society

Canadian Bar Association

Newfoundland and Labrador Federation of Labour

The Federation of Newfoundland Indians

The Conne River Micmacs

Communities

Goose Bay

Wabush

Marystown

Clarenville

Plum Point

Main

Corner Brook

Stephenville

St. John's

Grand Falls

APPENDIX B

List of Proposals

Part I: Shared Citizenship and Diversity

1. Reaffirming the rights and freedoms of citizens. The Government of Canada reaffirms the basic rights set out in the Charter as a fundamental feature of the Canadian Constitution. The Government of Canada proposes that the Canadian Charter of Rights and Freedoms be amended to guarantee property rights. The Government of Canada further proposes that the votes necessary for Parliament or a provincial legislature to invoke the override (section 33) be changed from a simple majority to 60 percent of the members of Parliament or the provincial legislature.

2. Recognition of Quebec distinctiveness and Canada's linguistic duality. The Government of Canada proposes that a section be included in the Charter stating that the Charter of Rights and Freedoms shall be interpreted in a manner consistent with the recognition of Quebec as a distinct society within Canada. The section would read:

25.1 (1) This Charter shall be interpreted in a manner consistent with

(a) the preservation and promotion of Quebec as a distinct society within Canada; and

(b) the preservation of the existence of French-speaking Canadians, primarily located in Quebec but also present throughout Canada, and English-speaking Canadians, primarily located outside Quebec but also present in Quebec.

(2) For the purposes of subsection (1), "distinct society", in relation to Quebec, includes

(a) a French-speaking majority;
(b) a unique culture; and
(c) a civil law tradition.

(See the Annex at the end of Part I for excerpts from the Charter: present sections 1,25,27,28 and 31 and proposed section 25.1.)

3. Aboriginal participation in current constitutional deliberations. The Government of Canada is committed to ensuring that aboriginal peoples participate in the current constitutional deliberations.

4. Aboriginal self-government. The Government of Canada proposes an amendment to the Constitution to entrench a general justiciable right to aboriginal self-government within the Canadian federation and subject to the Canadian Charter of Rights and

Freedoms, with the nature of the right to self-government described so as to facilitate interpretation of that right by the courts. In order to allow an opportunity for the Government of Canada, the governments of the provinces and the territories, and aboriginal peoples to come to a common understanding of the content of this right, its enforceability would be delayed for a period of up to 10 years. The Special Joint Committee should examine the broad parameters of the right to be entrenched in the Constitution and the jurisdictions that aboriginal governments would exercise.

5. **Aboriginal constitutional process.** The Government of Canada proposes the entrenchment of a constitutional process to address aboriginal matters that are not dealt with in the current constitutional deliberations and to monitor progress made in the negotiations of self-government agreements.

6. **Representation of aboriginal peoples in the Senate.** The Government of Canada proposes that aboriginal representation should be guaranteed in a reformed Senate.

7. **A Canada clause in the Constitution.** The Government of Canada proposes that a "Canada clause" that acknowledges who we are as a people, and who we aspire to be, be entrenched in section 2 of the Constitution Act, 1867. The Government of Canada believes that it would be appropriate for the following characteristics and values to be reflected in such a statement:

- a federation whose identity encompasses the characteristics of each province, territory and community;
- the equality of women and men;
- a commitment to fairness, openness and full participation in Canada's citizenship by all people without regard to race, colour, creed, physical or mental disability, or cultural background;
- recognition that the aboriginal peoples were historically self-governing, and recognition of their rights within Canada;
- recognition of the responsibility of governments to preserve Canada's two linguistic majorities and minorities;
- the special responsibility borne by Quebec to preserve and promote its distinct society;
- the contribution to the building of a strong Canada of peoples from many cultures and lands;
- the importance of tolerance for individuals, groups and communities;

- a commitment to the objective of sustainable development in recognition of the importance of the land, the air and the water and our responsibility to preserve and protect the environment for future generations;

- respect for the rights of its citizens and constituent communities as set forth in the Canadian Charter of Rights and Freedoms;

- the free flow of people, goods, services and capital throughout the Canadian economic union and the principle of equality of opportunity throughout Canada;

- a commitment to the well-being of all Canadians;

- a commitment to a democratic parliamentary system of government;

- the balance that is especially Canadian between personal and collective freedom on the one hand and, on the other hand, the personal and collective responsibility that we all share with each other.

Part II: Responsive Institutions for a Modern Canada

8. House of Commons. The Government of Canada commits itself to a process of further parliamentary reform to give individual MPs more free votes and to reduce the application of votes of confidence.

9. Principles of Senate reform: an elected, effective and more equitable Senate. The Government of Canada proposes that:

- the Senate be directly elected;

- Senate elections coincide with elections to the House of Commons;

- the Senate's composition provide for much more equitable provincial and territorial representation than at present;

- the House of Commons remain the primary legislative body;

- as a general rule, in order for measures to become law, approval of both the Senate and the House of Commons should be required as at present;

- for matters of language and culture, the Senate would also have a double majority special voting rule;

- for matters of national importance, such as national defence and international issues, the Senate would have a six-month suspensive veto. Following expiry of the suspensive veto, the House of Commons would be required to repass the legislation for it to become law;

- since the Senate is not a confidence chamber, the Senate would have no legislative role in relation to appropriation bills and measures to raise funds including borrowing authorities;

- guaranteed representation be provided for aboriginal Canadians in the Senate;

- the Senate continue to have a mandate to conduct special inquiries into issues of public policy.

10. **Details of reform.** The Government of Canada proposes that the Special Joint Committee of Parliament consider the following issues:

- the form of direct election to the Senate;

- the appropriate number and distribution of Senate seats;

- in consultation with the aboriginal peoples, the appropriate representation of Canada's First Peoples.

11. **Senate Ratification of Appointment for Regulatory Boards and Agencies.** The Government of Canada proposes that the Senate be given a mandate to ratify the appointment of the Governor of the Bank of Canada and the appointments of the heads of national cultural institutions, such as the Canadian Broadcasting Corporation, the National Film Board, the National Library, the National Archives, the national museums, the Canadian Film Development Corporation, the Canada Council and the National Arts Centre, as well as the heads of regulatory boards and agencies such as the National Energy Board, the National Transportation Agency, the Canadian Radio-television and Telecommunications Commission, the Immigration and Refugee Board, and the proposed Canadian Environmental Assessment Agency.

12. **Appointments to the Supreme Court of Canada.** The Government of Canada will introduce a constitutional amendment to provide for a role for the provinces and the territories in Supreme Court appointments whereby appointments would be made by the federal government from lists of nominees submitted by provincial and territorial governments, the individual appointed being acceptable to the Queen's Privy Council of Canada.

In addition, the Government of Canada would be prepared to proceed with the entrenchment in the Constitution of the Supreme Court and its composition if it were found desirable to proceed with any unanimity items in the final package.

13. **The Constitutional Amending Formula.** The Government of Canada would be prepared to proceed with changes to the amending formula as specified in the Meech Lake Accord if a consensus on this matter were to develop; if the accession of existing territories to provincehood were to proceed on the basis of the current amending formula; and if it were found desirable to proceed ultimately with any items requiring unanimous consent in the final package.

Part III: Preparing for a more Prosperous Future

14. **Broadening s. 121, the common market clause.** The Government of Canada proposes that section 121 of the Constitution Act, 1867 be amended to read as follows:

121. (1) Canada is an economic union within which persons, goods, services and capital may move freely without barriers or restrictions base on provincial or territorial boundaries.

(2) Neither the Parliament or Government of Canada nor the legislatures or governments of the provinces shall by law or practice contravene the principle expressed in subsection (1).

(3) Subsection (2) does not render invalid;

(a) A law of the Parliament of Canada enacted to further the principles of equalization or regional development;

(b) A law of a provincial legislature enacted in relation to the reduction of economic disparities between regions wholly within a province that does not create barriers or restrictions that are more onerous in relation to persons, goods, services or capital from outside the province than it does in relation to persons, goods, services or capital from a region within the province; or

(c) A law of the Parliament of Canada or of the legislature of a province that has been declared by Parliament to be in the national interest.

(4) A declaration referred to in paragraph (3) (c) shall have no effect unless it is approved by the governments of at least two-thirds of the provinces that have, in the aggregate, according to the then latest general census, at least 50 percent of the population of all the provinces.

(3) This section shall come into force on July 1, 1995.

15. **Power To Manage the Economic Union.** The Government of Canada proposes that the following section be added to the Constitution Act, 1867 immediately after section 91:

91A. (1) Without altering any other authority of the Parliament of Canada to make laws, the Parliament of Canada may exclusively make laws in relation to any matter that it declares to be for the efficient functioning of the economic union.

(2) An Act of the Parliament of Canada made under this section shall have no effect unless it is approved by the governments of at least two thirds of the provinces that have, in the aggregate, according to the then latest general census, at least 50 percent of the population of all the provinces.

(3) The legislative assembly of any province that is not among the provinces that have approved an Act of the Parliament of Canada under subsection (2) may expressly declare by resolution supported by 60 percent of its members that the Act of Parliament does not apply in the province.

(4) A declaration made under subsection (3) shall cease to have effect three years after it is made or on such earlier date as may be specified in the declaration.

The Government of Canada also proposes that the Special Joint Committee consider whether the opting-out provision should be renewable.

16. **Harmonization of economic policies.** The Government of Canada proposes to develop, with the provinces, an annual timetable to allow for more open and visible budget-making processes.

The Government of Canada proposes to develop, with the provinces, guidelines to improve the coordination of fiscal policies and the harmonization of fiscal policies with Canada's monetary policy. Once approved, these guidelines would be set in federal legislation under the new economic union power. Accordingly, these guidelines would require the approval of at least seven of the provinces representing 50 percent of the population, and up to three provinces could opt out.

The Government also proposes to discuss with the provinces the establishment of an independent agency to monitor and evaluate the macroeconomic policies of the federal and provincial governments.

17. **Reforms to the Bank of Canada.** The Government of Canada proposes to amend the Bank of Canada Act to make it clear that the mandate of the Bank is to achieve and preserve price stability. To ensure regional representation on the Board of Directors of the Bank of Canada, the Government will solicit the views of provincial and territorial governments and consult with them before making appointments to the Board. In addition, the Government proposes to create regional consultative panels to advise the Directors of the Bank on regional economic conditions. The Government will also solicit the views of provincial and territorial governments with respect to the membership of the regional panels. Moreover, the appointment of the Governor of the Bank of Canada would be subject to Senate ratification.

18. **Training.** The Government of Canada proposes that section 92 of the Constitution Act, 1867 be amended to recognize explicitly that labour market training is an area of exclusive provincial jurisdiction.

19. **Immigration.** While recognizing the federal role in setting Canadian policy and national objectives with respect to immigration, the Government of Canada is prepared to negotiate with any province agreements appropriate to the circumstances of that province and to constitutionalize those agreements.

20. **Culture.** The Government of Canada will negotiate with the provinces, upon their request, agreements appropriate to the particular circumstances of each province to define clearly the role of each level of government. Where appropriate, such agreements would be constitutionalized.

21. **Broadcasting.** The Government of Canada proposes to:

1. consult with the provinces on the issuance of new licences;

2. provide provincial governments and their agents with the opportunity to evolve into full public broadcasting undertakings with varied programming, subject to CRTC regulation;

3. further regionalize the operations of the CRTC and expand the roles of its regional offices;

4. allow for provincial participation in the nomination of regional commissioners of the CRTC.

22. **The Residual Power.** The Government of Canada proposes to reserve to itself the Peace, Order and Good Government clause of the Constitution Act, 1867 to maintain its authority to deal with national matters or emergencies. However, the Government of Canada is prepared to transfer to the provinces authority for non-national matters not specifically assigned to the federal government under

the Constitution or by virtue of court decisions.

33. **The Federal Declaratory Power.** The Government of Canada is prepared to support a constitutional amendment to remove the declaratory power set out in section 92(10)(c).

34. **Recognising Areas of Provincial Jurisdiction.** Within this framework, the Government of Canada is committed to ensuring the preservation of Canada's existing research and development capacity obligations for international and native affairs. The Government of Canada is prepared to recognize the exclusive jurisdiction of the provinces and discuss how best to exercise its own responsibilities in a manner appropriate to the sector in the following areas:

- tourism
- forestry
- mining
- recreation
- housing
- municipal/urban affairs

35. **Legislative Delegation.** The Government of Canada endorses the recommendation of the Beaudoin-Edwards Joint Parliamentary Committee that there be a constitutional amendment providing for delegation of legislative powers between Parliament and the legislatures, and that there be provisions inserted in the Constitution to enable the delegation of legislative authority between the two levels of government with the mutual consent of the legislative bodies involved.

36. **Candidates for Streamlining.** In order to provide Canadians with the best service at the lowest possible cost, the federal government is prepared to discuss with the provinces the rationalization of government programs and services by reviewing which level of government can best deliver them. All proposals from the provinces will be considered. As a starting point, the Government proposes to discuss the following areas with the provinces:

- drug prosecutions
- wildlife conservation and protection
- transportation of dangerous goods
- soil and water conservation
- ferry services
- small craft harbours
- some aspects of financial sector regulation
- some aspects of bankruptcy law
- some aspects of unfair trade practices
- inspection programs

37. **The Exercise of the Federal Spending Power in Areas of Exclusive Provincial Jurisdiction.** The Government of Canada commits itself not to introduce new Canada-wide shared-cost programs and conditional transfers in areas of exclusive provincial jurisdiction without the approval of at least seven provinces representing 50 percent of the population. This undertaking would be entrenched in the Constitution. The constitutional amendment would also provide for reasonable compensation to non-participating provinces which establish their own programs meeting the objectives of the new Canada-wide program.

38. **Working Together:** a Council of the Federation. The Government of Canada proposes the entrenchment of a Council of the Federation, composed of federal, provincial and territorial governments, that would meet to decide on issues of intergovernmental coordination and collaboration. The Council would have the mandate to vote on proposed federal legislation to enhance the functioning of the economic union under the proposed new head of power; to vote on guidelines for fiscal harmonization and coordination as well as to decide on processes to improve future collaboration in this area; and to make decisions on the use of the federal spending power on new Canada-wide shared-cost programs and conditional transfers in areas of exclusive provincial jurisdiction. All decisions of the Council of the Federation would require the approval of the federal government and of at least seven provinces representing 50 percent of the population.

Recommendation #1:

While some Committee members were philosophically inclined to support a charter right to property, they felt the proposal lacked clarity. The majority, however, felt strongly that it is unnecessary and unwise to include property rights in the charter. The lack of demand from Canadians for this protection and the possible consequences for collective rights and government action, together with the enormous potential for extensive litigation regardless of how narrowly the right may be defined, led the Committee to recommend that the proposal be rejected.

Recommendation #2:

With respect to the override provision of section 33, although this matter received very little public attention, a majority of the Committee felt the section should be eliminated entirely. All Canadians, regardless of province of residence, should be guaranteed the same protection of their individual rights and freedoms. Further, the fact that Canada's "first-past-the-post" electoral system frequently results in federal and provincial governments being formed with the support of less than one-half of the voters, combined with the current realities of party discipline, makes it imperative that a legislative majority possibly formed from an electoral minority not be able to restrict the rights of citizens, even for five years.

On the other hand, some members are of the opinion that the notwithstanding clause is an expression of the supremacy of parliament and that parliament is a more appropriate forum for the development of social policy than the courts.

Recommendation #3:

a) The Committee recommends that Quebec's distinct society be constitutionally recognized.

b) A majority agrees that such recognition be entrenched by an addition to the Charter of Rights and Freedoms but recommends modification to the proposed federal text for a new section 25.1

c) The Committee recommends that the proposed new paragraph 25.1(1)(b) of the Charter of Rights and Freedoms be changed to read as follows:

(b) "the vitality and development of the language and culture of French-speaking and English speaking minority communities throughout Canada"

d) The Committee recommends by a narrow majority that the words "in its application to the Inuit of Quebec" be inserted at the beginning of the proposed paragraph 25.1(1)(a) and the word "includes" in proposed clause 25.1(2) be changed to "means".

Recommendation #4:

The majority of the Committee recommends that the Constitution should be amended to recognize that the aboriginal peoples of Canada have the inherent right of self-government within Canada. The inherent right of self-government should be entrenched in the Constitution. However, its justiciability should be delayed for a three year period through constitutional language and a political accord. Delaying the justiciability of the right will not make the right contingent and will not affect existing treaties.

Recommendation #5:

Because of concerns among the public, and indeed among the Committee members themselves, as to just what an inherent right to self government means, the Committee recommends that the government undertake, in co-operation and consultation with the aboriginal peoples of the province, a process designed to increase public awareness of the issues involved in the development of self-government for aboriginal people and how these issues might be addressed.

Recommendation #6:

With regard to federal proposals 3 and 5 concerning aboriginal participation in the constitutional process, the Committee recommends the following:

1) in order to protect the aboriginal and treaty rights which the Constitution guarantees to the aboriginal peoples of Canada, any amendment to the Constitution of Canada directly affecting the aboriginal peoples requires the consent of the aboriginal peoples of Canada prior to its implementation;

2) representatives of the aboriginal peoples of Canada be invited to all future constitutional conferences relating to the matters referred to in paragraph (1); and

3) a constitutional conference be convened within two years after the amendment on the inherent right of self-government of the aboriginal people comes into force.

Recommendation #7:

(a) The Committee further recommends that there be a constitutional commitment by the federal and provincial governments and the aboriginal peoples in the various regions and communities of Canada to negotiate in good faith with the objective of concluding agreements establishing the relationship between aboriginal governments and the other orders of government. The negotiations would focus on the scope of the right of self-government including issues of jurisdiction, lands and resources, economic and fiscal arrangements.

(b) The Committee recommends that the Federal and Provincial governments, in negotiating the issues surrounding self-government ensure that the equality rights of aboriginal women are protected.

Recommendation #8:

The Committee recommends that a Canada clause be entrenched in section 2 of the Constitution Act, 1867, and that the following characteristics be specifically included:

1) parliamentary democracy and Canadian federalism;
2) the aboriginal peoples of Canada and related rights and responsibilities;

3) recognition of Quebec as a distinct society;
4) linguistic duality;
5) racial and ethnic equality;
6) equality of women and men; and
7) the equality of the provinces.

Recommendation #9:

While the Committee endorses the view that an increase in free votes and a corresponding decrease in votes of confidence would be a positive development in the House of Commons, we are of the view that this proposal is not essential to the current constitutional debate since a constitutional amendment is not required to put it into effect. The proposal should, therefore, be rejected.

Recommendation #10:

A majority of the Committee recommends that the Senate be reformed as follows:

1) The Constitution should be amended to provide that Senators are directly elected by the people of Canada;

2) an equal number of Senators should be elected from each province;

3) federal legislation should govern Senate elections, subject to constitutional provisions respecting the timing of elections, the term of office of Senators and the qualification of Senators;

4) this legislation should ensure that Senators will be elected by proportional representation instead of by the "first-past-the-post" system currently used in elections. The specific system should be set out in the federal legislation and should be chosen to reflect the diversity of Canada's population, notably taking account of gender equality;

5) all Senators should be elected at the same time;

6) Senators should be elected for terms of fixed duration, on an electoral cycle that is independent of elections to the House of Commons or to provincial

legislatures and territorial assemblies. The length of the term should be five years;

7) aboriginals should be guaranteed representation in the Senate; and

8) the reformed Senate should retain all the powers of the existing Senate and, in addition, should have the power to ratify federal appointments to regulatory boards and agencies as set out in proposal 11 of Shaping Canada's Future Together.

Recommendation #11:

The Committee recommends that the present system be maintained because it appears to be operating well. The Committee also supports a constitutional provision guaranteeing that three of the judges on the Supreme Court of Canada must have been admitted to the civil law bar of Quebec.

Recommendation #12:

The Committee recommends that section 41 of the Constitution Act, 1982 be deleted and that the necessary consequential amendments be made so that all amendments to the Constitution, except those falling under section 43, require the approval of at least two-thirds of the provinces having at least 50% of the population of all the provinces.

Recommendation #13:

The Committee recommends that any federal bill which affects the French language or culture must receive a majority vote in the reformed Senate of French-speaking Senators as well as a majority vote of the Senate as a whole.

Recommendation #14:

The Committee endorses section 43 of the Constitution Act, 1982.

Recommendation #15:

The Committee recommends that proposals 14, 15, and 16 not be incorporated into the constitution.

Recommendation #16:

The Committee is of the opinion that the Bank of Canada proposal should not be dealt with in this round of discussions on the Constitution. This is one of the proposals which unnecessarily complicates the overall Constitutional package and it is not necessary to include it in the Constitution.

Recommendation #17:

The Committee feels that, while there may be problems with the present system, transferring responsibility under the Constitution to the provinces is not in this province's best interest nor is it in the best interest of the country as a whole. Proposal 18 should therefore be rejected.

Recommendation #18:

The Committee is of the opinion that the current system for entering into agreements concerning immigration and culture is satisfactory. Incorporating these agreements into the Constitution is inappropriate and unnecessary.

Recommendation #19:

The Committee is of the opinion that the objectives sought through this proposal can be met in ways other than through the Constitution and therefore recommends that proposal 21 not be proceeded with.

Recommendation #20:

The Committee recommends that proposals 22 and 23 be rejected.

Recommendation #21:

The Committee recommends that proposal 24 be rejected.

Recommendation #22:

The Committee believes that the adoption of proposal 25 would lead to patchwork federalism with provinces having different legislative powers. The Committee recommends that the proposal be rejected.

Recommendation #23:

The Committee believes that proposal 26 could have a detrimental effect on this province and that it should not be included in the Constitution.

Recommendation #24:

The Committee recommends that this proposal not be included in the Constitution because we believe that the requirement of having the approval of seven provinces representing 50% of population could prevent the adoption of new national cost shared programs. The Committee believes that the social programs previously initiated by the federal government are an essential part of the national fabric.

Recommendation #25:

The Committee is of the view that this concept would be worth pursuing only if the Senate is not structured and operating along the lines referred to in our recommendation on Proposal 9. Otherwise, the Committee feels the establishment of such a Council would mean that governments would be abdicating their responsibility to a group that is unelected as a body and therefore unaccountable. In principle therefore, the Committee cannot endorse the concept.

Recommendation #26:

The Committee recommends that a new section 36(1)(d) add a commitment to ensure the provision of reasonably comparable economic infrastructure of a national nature in each province and territory.

Recommendation #27:

The Committee recommends that section 36 (2) be amended as follows:

"Parliament and the Government of Canada are committed to making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation."

Recommendation #28:

The Committee recommends that a new section 36 (3) should be added to entrench the commitment of governments to the promotion of regional economic development to reduce economic disparities.

Recommendation #29:

The Committee recommends that the following principles be added as section 36.1:

1) Providing throughout Canada a health care program that is comprehensive, universal, portable, publicly administered and accessible.

2) Providing social services and welfare based on need, so as to ensure that persons resident in Canada have access to a minimum level of housing, food and other basic necessities.

3) Providing high quality public primary and secondary education to all persons resident in Canada and ensuring reasonable access to post secondary education.

4) Protecting, preserving, and sustaining the integrity of the environment for present and future generations.

5) Protecting the opportunities of workers to organize and bargain collectively.

Recommendation #30:

The Committee recommends that the rights under section 36 and 36.1 not be justiciable.

Recommendation #31:

The majority of our Committee recommends that an independent, intergovernmental agency be established to review, assess, and report on the performance of the federal, provincial and territorial governments in meeting their joint commitments and objectives as stated in section 36 and 36.1 of the Constitution Act, 1982.

Recommendation #32:

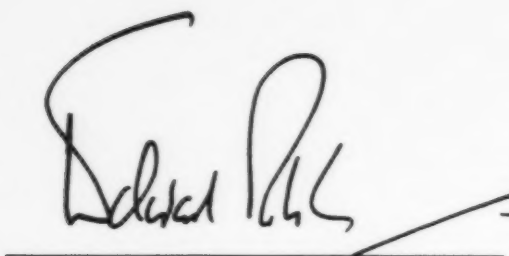
The majority of the Committee recommends that if the current round of constitutional talks should fail, or if major constitutional adjustments are required in the future, that a representative constituent assembly be created. The constituent assembly should have an equitable number of citizens elected from each province, and should be given the widest possible mandate with no time limits.

Recommendation #33:

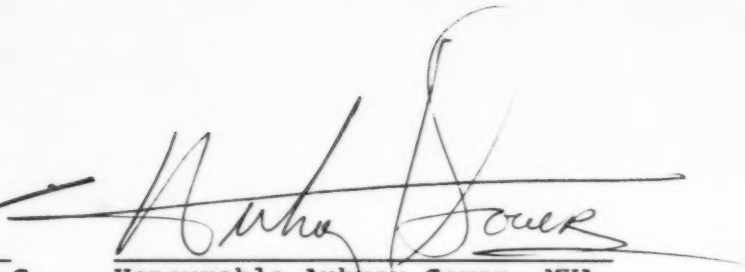
The Committee recommends that any such future committee have an independent chairperson who is not an MHA or a member of Cabinet, an approved budget, and full-time secretarial assistance.

Recommendation #34:

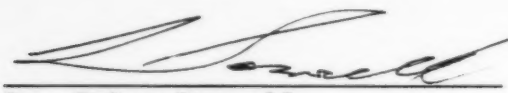
The Committee recommends that a federal-provincial fisheries joint management agreement be negotiated and entrenched in the constitution.



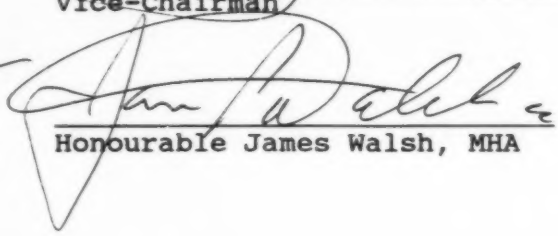
Honourable Edward Roberts, Q.C.
Chairman



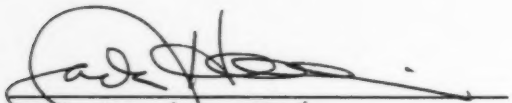
Honourable Aubrey Gover, MHA
Vice-Chairman



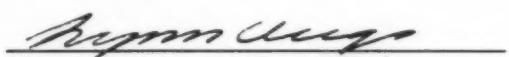
Dr. Peter Boswell



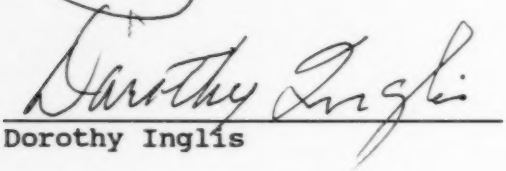
Honourable James Walsh, MHA



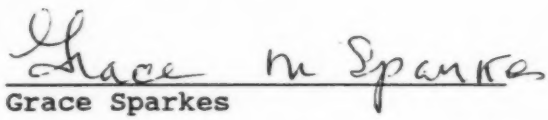
Jack Harris, MHA *



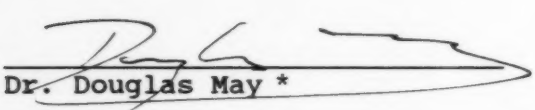
Lynn Verge, Q.C., MHA *



Dorothy Inglis

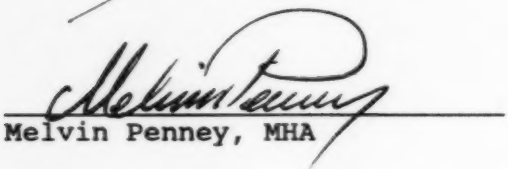


Grace Sparkes



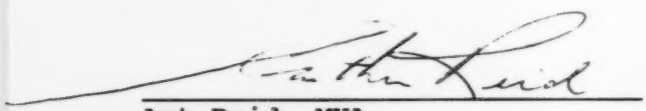
Dr. Douglas May *

Alec Snow, MHA



Melvin Penney, MHA

Beatrice Watts



Art Reid, MHA

Derrick Watton

* Minority Report Submitted